RECENT DECISIONS

BANKRUPTCY—GENERAL ASSIGNMENTS—REMOVAL OF ASSIGNEE BEFORE ADJUDICATION.—A debtor made a general assignment under state law for the benefit of his creditors. A petition in bankruptcy was filed against him within four months, and before adjudication a motion was made in the bankruptcy court to remove summarily the assignee and to appoint a receiver to take possession of the goods. The assignee was of high character and there was no showing that the appointment of a receiver was absolutely necessary. *Held*, the motion will be granted. *In re D. & E. Dress Co.*, 244 Fed. 885, 40 A. B. R. 360. See NOTES, p. 272.

BILLS AND NOTES—NEGOTIABILITY—RECITAL OF "AS PER AGREEMENT."—The defendant made a note containing a recital of the consideration for which it was given and the further clause, "as per contract" of certain date. The plaintiff, a holder in due course, brought an action on the note. *Held*, the note is not negotiable. *Continental Bank & Trust Co.* v. *Times Pub. Co.* (La.), 76 South. 612.

Knowledge that a note was given in consideration of an executory contract of the payee will not constitute a defense to an action on the note by a holder in due course, unless he had notice of the breach of the contract. *Rublee* v. *Davis*, 33 Neb. 779, 51 N. W. 135, 29 Am. St. Rep. 509. And the mere recital of the consideration for which it was given does not affect the negotiability of a note, as where a note reads, "for the privilege of one framed advertising sign * * * for a term of three months" from a certain date. *Seigel Cooper & Co.* v. *Chicago Trust & Savings Bank*, 131 Ill. 569, 7 L. R. A. 537, 19 Am. St. Rep. 51.

It is well settled that a reference in a note to a prior or contemporaneous contract, which, upon its face, makes the note "subject to" the terms of the contract, destroys its negotiability. *McComas* v. *Haas*, 107 Ind. 512, 8 N. E. 579; *Klots Throwing Co.* v. *Manufacturer's Commercial Co.*, 179 Fed. 813, 103 C. C. A. 305, 30 L. R. A. (N. S.) 40. The real question is generally to determine from the language of the instrument whether the contract is incorporated into the instrument or whether the consideration is merely earmarked by it.

In England such references in notes as that of the instant case have been generally held to be mere recitals of consideration or tags of identification. So a recital in a note, "as per memorandum of agreement," was held to have no effect on the quality of the note as a negotiable instrument. *Jury* v. *Barker*, El. Bl. & El. 459. And a similar holding was made in *Brill* v. *Crick*, 1 Mees. & W. 232.

In America the courts seem to be rather uncertain in regard to the construction which should be given to stipulations similar to that of the instant case. Consequently there is irreconcilable conflict among the courts. There are decisions which sustain the view that a reference to a prior or contemporaneous contract incorporates the terms

of that contract into the note. Thus, a note reciting, "for consideration of carpenter work in our article of agreement" of given date, was held nonnegotiable. *Reynolds* v. *Richards*, 14 Pa. 205. And a note to pay a certain amount "for value received in one machinery as per contract" of certain date was burdened with all defenses which could be set up to an action on the contract. *First National Bank of Richmond* v. *Badham*, 86 S. C. 170, 68 S. E. 536. There is a contrary line of decisions which hold such a reference as that of the instant case to be a mere recital of consideration, and hence it does not affect the negotiability of a note. So a recital that "this note is given in accordance with the terms of a certain contract under the same date, and between the same parties" did not destroy the negotiability of the note. *Markey* v. *Corey*, 108 Mich. 184, 66 N. W. 493, 36 L. R. A. 117, 62 Am. St. Rep. 698. It seems that the latter is the better vew, since it is the policy of the law to favor negotiable instruments. For a discussion as to when an extension of time affects negotiability, see 5 VA. LAW REV. 145.

COMPROMISE—LIABILITY INSURANCE—DECREASING THE AMOUNT INSURED AGAINST.—The plaintiff was insured by the defendant to the extent of $5,000 against liability for accidents resulting from the operation of an automobile. A party injured by the automobile brought an action of damages for $25,000. A clause in the policy reserved to the insurer the right to defend such accidents or to settle on the best terms possible. Before trial of the action for the injury, the claimant, through negotiations of the insurer, agreed to accept $3,150 in satisfaction of his claim. The defendant advised the plaintiff that this was a reasonable offer, and that if the case proceeded to trial, it might result in a judgment much larger than the amount covered by the policy, but refused to agree to the proposed settlement, unless the plaintiff would bear $750 of the loss. In order to avoid the risk of a judgment in excess of the amount of his policy, the plaintiff contributed the money towards the proposed settlement, and then brought an action to recover such amount from the defendant. *Held*, the plaintiff can not recover. *Levin* v. *New England Casualty Co.*, 166 N. Y. Supp. 1055.

Although the facts in the instant case seem to present a question of first impression, yet it seems that they should be governed by the principles applicable to compromises, which are governed by the general rules applicable to all contracts. *Armijo* v. *Henry*, 14 N. M. 181, 89 Pac 305, 25 L. R. A. (N. S.) 275. See 5 R. C. L. 876. However, the law favors such contracts as tending to prevent litigation. *Smith* v. *Smith*, 36 Ga. 184; 91 Am. Dec. 761. While the controversy is fresh the parties themselves know more completely than any one else what justice requires at their hands. *Doyle* v. *Donnelly*, 56 Me. 26.

The principal elements necessary to a valid compromise are the reality of the claim made, and the good faith of the settlement. *Trenton St. Ry. Co.* v. *Lawlor*, 74 N. J. Eq. 828, 71 Atl. 234. While the adequacy of the consideration will not be inquired into, the want of any consideration whatever may be inquired into. *Creutz* v. *Heil*, 89 Ky. 429, 12 S. W. 926.

The holding in the instant case seems to be wholly dependent upon